

*United States Court of Appeals
for the Second Circuit*



**PETITION FOR
REHEARING**

74-1388

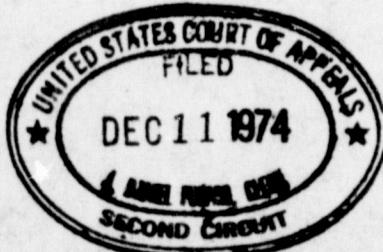
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, : Docket No: 74-1388
Appellee, :
vs. : PETITION FOR REHEARING
RAUL ORTEGA-ALVAREZ, :
Appellant :

The Appellant, RAUL ORTEGA-ALVAREZ, files this Petition for Rehearing, through counsel, pursuant to Rule 40 of the Federal Rules of Appellate Procedure, and the Extension of Time heretofore granted by this Court in its Order dated December 3, 1974, and as grounds for the granting of said Petition Appellant would show that the Court overlooked or misapprehended the following points of law and fact:

1. That although the Defendant pleaded guilty to and was sentenced on a lesser charge in the Southern District of Florida, the evidence supporting the conviction in this case was essentially the same evidence supporting the original conspiracy charge for which he was Indicted in Florida. It was confrontation with this evidence that caused the Defendant to enter into plea negotiations with the Government.



2. That intertwined in Appellant's position that this prosecution is barred by the Double Jeopardy Clause of the Fifth Amendment is that his rights under the Due Process Clause was similarly violated and that it is wrong to separate the two arguments.

3. When plea negotiations were entered into with the Government in the Florida proceedings, there was an implicit understanding that in exchange for his plea of guilt and subsequent sentence there would be no further prosecution for any crimes arising out of this transaction. The prosecution and conviction presently before this Court was clearly a violation of Appellant's rights and a violation of the agreement entered into with the Government in the negotiations which resulted in his plea in the Southern District of Florida.

4. If this Court maintains its position and fails to grant a rehearing, it would undermine every negotiated plea entered into between an accused and the Government.

5. Practical application of this Court's holding means that every defendant who has negotiated a plea in good faith to a multiple count Indictment or Information could be reprosecuted on each count of said Indictment or Information which was dismissed by the Government in exchange for his plea.

WHEREFORE, for the foregoing reasons, the Appellant, RAUL ORTEGA-ALVAREZ, requests this Court to grant this Petition and order a rehearing in this matter.

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By: Max B. Kogen
Max B. Kogen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy
of the foregoing Petition for Rehearing was this 19th day of
December, 1974, mailed to the HONORABLE PAUL J. CURRAN, United
States Attorney, Attention SHIRAH NEIMAN, Assistant United States
Attorney, United States Courthouse, Foley Square, New York, New
York.

By: Max B. Kogen
Max B. Kogen

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